

§ 1806.202-70

(A) Reasons for lack of sources; e.g., the technical complexity and criticality of the item.

(B) Current annual requirement and prospective needs for the supplies and services.

(C) Projected future requirements.

(iv) Whether the existing source must be totally excluded from the action or whether a partial exclusion is sufficient.

(v) The potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions.

(vi) When the authority of FAR 6.202(a)(1) is cited, the basis for—

(A) Assumptions regarding future competition; and

(B) The determination that exclusion of a particular source will likely result in reduced overall costs for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, costs associated with facilities, duplicative administration costs (such as for additional inspection or testing), economic order quantities, and life-cycle-cost considerations.

(vii) When an additional source or additional sources must be established to provide production capacity to meet current and mobilization requirements—

(A) The current annual and the mobilization requirements for the item, citing the source of, or the basis for, the planning data;

(B) A comparison of current production capacity with current and mobilization requirements; and

(C) The hazards of relying on the present source and the time required for new sources to acquire the necessary facilities and skills and achieve the production capacity necessary to meet requirements.

§ 1806.202-70 Formats.

A sample format for D&Fs citing the authority of FAR 6.202(a) follows:

48 CFR Ch. 18 (10-1-96 Edition)

National Aeronautics and Space
Administration, Washington, DC 20546

Determination and Findings

Authority to Exclude a Source

On the basis of following findings and determination, which I make under the authority of 10 U.S.C. 2304(b)(1) as implemented by FAR 6.202, the proposed contract action described below may be awarded using full and open competition after exclusion of ____ (1).

Findings

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the source identified above.

2. The source identified above can be expected to receive an award for this requirement unless excluded.

3. It is necessary to establish or maintain an alternative source or sources.

4. The exclusion of this source will increase or maintain competition and is likely to result in reduction of ____ (2) in overall costs for any anticipated acquisition of the supplies or services being acquired. This estimate is based on ____ (3).

(See Note 4 for the use of Alternates I and II below.)

Alternate I: The exclusion of this source will serve the national defense interest by having an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization, because ____ (5).

Alternate II: The exclusion of this source will serve the national defense interest by establishing or maintaining an essential engineering, research, or development capability of an educational or other nonprofit institution or a federally funded research and development center, because ____ (5).

Determination

The exclusion of the source identified above will increase or maintain competition and is likely to result in reduced overall costs for any anticipated acquisition of the supplies or services being acquired.

(See Note 4 for the use of Alternates I and II below.)

Alternate I: It is in the interest of the national defense to exclude the source identified above in order to have an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization.

Alternate II: It is in the interest of national defense to exclude the source identified above in order to establish or maintain

an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date _____

NOTES:

1. Name of source to be excluded.
2. Description of estimated reduction in overall costs.
3. Description of how estimate was derived.
4. In paragraph 4 and in the Determination, the basic wording is appropriate when FAR 6.202(a)(1) applies; Alternate I is appropriate when FAR 6.202(a)(2) applies; and Alternate II is appropriate when FAR 6.202(a)(3) applies.
5. Description of circumstances necessitating the exclusion of the identified source.

Subpart 1806.3—Other Than Full and Open Competition

§ 1806.302 Circumstances permitting other than full and open competition.

§ 1806.302-4 International agreement.

§ 1806.302-470 Documentation.

Pursuant to 10 U.S.C. 2304(f)(2)(E), an individual justification for other than full and open competition under the authority of FAR 6.302-4 is not required when the procurement officer signs a Memorandum for the Record that:

- (a) Describes the specific terms of the international agreement or treaty that limit acquisitions in support of, or as a result of, the agreement or treaty to less than full and open competition;
- (b) Is reviewed and approved by the appropriate competition advocate in accordance with NFS 1806.304-70; and
- (c) Is included in each official contract file in the place for filing a Justification for Other than Full and Open Competition (see NASA Form 1098).

1806.302-7 Public interest. (NASA supplements paragraph (c))

(c)(2) The notice to Congress shall be made by NASA Headquarters, Office of Legislative Affairs (Code LC). Code HS shall request the notice to be made immediately upon approval of a D&F and shall advise the contracting activity of the date upon which the notification period ends.

(3) The contracting officer shall prepare the D&F required by FAR 6.302-

7(c)(1) in any format that clearly documents the determination and the supporting findings.

1806.303 Justifications.

1806.303-1 Requirements. (NASA supplements paragraphs (b) and (d))

(b) Justifications for using less than full and open competition may be prepared by the technical office initiating the contract action when it is recommending the use of the justification authority, or by the contracting officer if the technical office does not make such a recommendation.

(d) The contracting officer shall send a copy of each approved justification or D&F that cites that authority of FAR 6.302-1 (a)(2)(i) or FAR 6.302-7 to NASA Headquarters, International Relations Division (Code IR), unless one of the exceptions at FAR 25.403 applies to the acquisition. The transmittal shall indicate that the justification is being furnished under FAR 6.303-1(d).

1806.303-170 Sole-source purchases by contractors.

The requirements of FAR part 6 and this part 1806 apply if NASA directs a prime contractor (by specifications, drawings, parts lists, or otherwise) to purchase items on a sole-source basis. Accordingly, procurement officers shall take necessary actions to ensure that such sole-source acquisitions are properly justified. Where "brand name or equal" purchase descriptions list the salient physical, functional, or other characteristics of the item being procured and are properly used under 1811.104, the justification requirements of FAR part 6 and this part 1806 do not apply.

1806.303-2 Content.

1806.303-270 Use of unusual and compelling urgency authority.

If the authority at FAR 6.302-2 is used for extending the performance period of an existing services contract, the justification shall contain the information required by FAR 6.303-2 and:

(a) Documentation that the acquisition process for the successor contract was started early enough to allow for adequately planning and conducting a full and open competition, together

with a description of the circumstances that prevented award in a timely manner; and

(b) Documentation of the reasons why no other source could practicably compete for the interim requirement.

1806.304-70 Approval of NASA justifications.

Concurrences and approvals for justifications of contract actions conducted in accordance with FAR subparts 6.2 and 6.3 shall be obtained as follows:

(a) For proposed contracts over \$500,000 but not exceeding \$10,000,000—

(1) Concurring official: Procurement Officer

(2) Approving official: Center or Headquarters Competition Advocate.

(b) For proposed contracts over \$10,000,000 but not exceeding \$50,000,000—

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(2) Approving official: Center Director or Associate Administrator for Headquarters Operations.

(c) For proposed contracts over \$50,000,000—

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(iii) Center Director or Associate Administrator for Headquarters Operations

(iv) Agency Competition Advocate

(2) Approving Official: Associate Administrator for Procurement

(d) The approval authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.

(e) For proposed contract actions requiring approval by the Associate Administrator for Procurement, the original justification shall be forwarded to the Associate Administrator for Procurement (Code HS).

(f) Regardless of dollar value, class justifications shall be approved by the Associate Administrator for Procurement.

Subpart 1806.5—Competition Advocates

1806.501 Requirement. (NASA paragraphs (1), (2), (3) and (4))

(1) The Deputy Associate Administrator for Procurement is the agency competition advocate, reporting to the Associate Deputy Administrator on issues related to competition of NASA acquisitions.

(2) The Center Deputy Directors or Associate Directors are the competition advocates for their contracting activities.

(3) The Director, Program Operations Division, Code HS, is the competition advocate for the Headquarters contracting activity.

(4) The Deputy Manager is the contracting activity competition advocate for the Space Station Program Office.

1806.502 Duties and responsibilities. (NASA supplements paragraph (b))

(b)(i) Center competition advocates shall submit annual reports to the agency competition advocate (Code HS) on or before November 30.

(ii) The agency competition advocate shall submit an annual agency report on or before January 31.

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

Sec.

1807.103 Agency-head responsibilities.

1807.105 Contents of written acquisition plans.

1807.170 Acquisition Strategy Meeting (ASM)

Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities

1807.204 Responsibilities of contracting officers.

Subpart 1807.3—Contractor Versus Government Performance

1807.307 Appeals.

Subpart 1807.5—Inherently Governmental Functions

1807.503 Policy.